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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/930,917	08/16/2001	John E. Gunderman	20386/305	2246

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EXAMINER
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GELLNER, JEFFREY L

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 02/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/930,917

**Applicant(s)**

GUNDERMAN ET AL.

**Examiner**

Jeffrey L. Gellner

**Art Unit**

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 21 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-5, 7-10, 12, 14-16 and 25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 12 and 14 is/are allowed.
- 6) ☒ Claim(s) 1, 4, 5, 7-10, 15, 16 and 25 is/are rejected.
- 7) ☐ Claim(s) 2, 3 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

The after final amendment received 21 Jan. 2004 has been entered. However, after further consideration the prior art allowability any claim has been withdrawn. New art has been applied. Examiner regrets any inconvenience to the Applicant.

#### ***Claim Objections***

Claims 1, 12, and 25 are objected to because of the following informalities:

In Claim 1 at lines 4, 5, 8, 9, and 13, "the leg" should be --at least one leg-- to have consistent language in the claim.

In Claim 12, Examiner questions whether the step of "inserting a plant container into the interior volume of the wire structure" should follow the step of "pulling up on said least one loop. . .".

In Claim 25, line 4, "disposed connected" is unclear in meaning.

Appropriate correction is required.

#### ***Claim Rejections - 35 USC §103***

The following is a quotation of 35 U.S.C. §103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 4, 5, 7-9, 15, and 25 are rejected under 35 U.S.C. §103(a) as being unpatentable over Emalfarb et al (US 5,784,972) in view of Markowski (US 1,536,678).

As to Claim 1, Emalfarb et al. discloses a stackable plant support Figs. 1-7) comprising an upper ring (26 of Fig. 1); a lower ring (32 of Fig. 1); at least one leg (20,22,24 of Fig. 1) attached to the upper ring and lower ring, the leg adapted to support the upper ring and lower ring and engage the ground, wherein said at least one leg is an elongated U-shaped member comprising a closed end (shown in Fig. 1) and an open end (shown in Fig. 1) defined by two portions of the U-shaped member; the upper ring is attached to said at least one leg proximate the closed end such that a loop (shown as region above ring 24 in Fig. 1) is formed above the upper ring by the closed end of the leg; the ends of the two portions of the U-shaped member (shown in Fig. 1) are adapted to engage the ground; and the plant support shaped to enclose plants and support plant containers (col. 1 lines 11-12, 40-42) ) by inserting a plant container into the interior volume of the wire structure, wherein the plant container is supported above the ground by the wire structure. Not disclosed is the leg comprising a ledge shaped so as to permit application of a downward force by a plant support user to insert a portion of the plant support into the ground, the ledge defined by a bend in the leg, the ledge located below the position where the lower ring attaches to the leg. Markowski, however, discloses a ledge (region of 4 and 6 in Fig. that is bent) shaped so as to permit application of a downward force (col. 1 line 52-55) by a plant support user to insert a portion of the plant support into the ground, the ledge defined by a bend in the leg (region of 4 and 6 in Fig. that is bent), the ledge located below the position where the lower ring attaches to the leg (see Fig.) It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the support of Emalfarb et al. by having a ledge as disclosed by Markowski so as to allow the support to be placed in the ground so as to provide better support on specific surfaces.

As to Claim 4, Emalfarb et al. as modified by Markowski further disclose the support made of wire (col. 4 line 16-17).

As to Claims 5 and 15, the limitations of Claims 1 and 4 are disclosed as described above. Not disclosed is the support made of plastic or galvanized metal. It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the support of Emalfarb et al. as modified by Markowski by making of either plastic or galvanized metal where rusting may be problem and depending upon the relative costs of plastic and galvanized metal compared to wire.

As to Claim 7, Emalfarb et al. as modified by Markowski further disclose the ledge a bend in both portions (inherent in that both portions of each U-shaped leg in Fig. 1 would have to be bent to achieve a ledge as shown in Markowski).

As to Claim 8, Emalfarb et al. as modified by Markowski further disclose the rings shaped to permit insertion of a plant container and the upper ring adapted to engage a portion of the plant container.

As to Claim 9, Emalfarb et al. as modified by Markowski further disclose the rings attached by wrap (Fig. 7).

As to Claim 25, Emalfard et al. discloses a wire structure (Figs. 1-7; col. 4 lines 16-17) comprising at least one vertical ring (26 of Fig. 1) space and horizontally disposed connected to at least one U-shaped leg (20,22,24 of Fig. 1) extending downwardly from the ring (see Fig. 1), the wire structure defining an interior space (see Fig. 1); the ends of the two portions of the U-shaped member (shown in Fig. 1) are adapted to engage the ground; and the plant support shaped

to enclose plants and support plant containers (col. 1 lines 11-12, 40-42) ) by inserting a plant container into the interior volume of the wire structure, wherein the plant container is supported above the ground by the wire structure. Not disclosed is the leg comprising a ledge shaped so as to permit application of a downward force by a plant support user to insert a portion of the plant support into the ground, the ledge defined by a bend in the leg, the ledge located below the position where the lower ring attaches to the leg. Markowski, however, discloses a ledge (region of 4 and 6 in Fig. that is bent) shaped so as to permit application of a downward force (col. 1 line 52-55) by a plant support user to insert a portion of the plant support into the ground, the ledge defined by a bend in the leg (region of 4 and 6 in Fig. that is bent), the ledge located below the position where the lower ring attaches to the leg (see Fig.) It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the support of Emalfarb et al. by having a ledge as disclosed by Markowski so as to allow the support to be placed in the ground so as to provide better support on specific surfaces. The structure of Emalfarb et al. as modified by Markowski inherently performs the method steps of Claim 25.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 10 and 16 are rejected under 35 U.S.C. §102(b) as being anticipated by Arnett (US 2,839,202).

As to Claim 10, Arnett discloses a plant cage apparatus (Fig. 1) comprising at least two arcuate parallel vertically spaced horizontally disposed members 12 and 14 of Fig. 1), wherein the two arcuate members are an upper ring (12 of Fig. 1) and a lower ring (14 of Fig. 1), the lower ring having a larger diameter than the upper ring (shown in Fig. 1), the upper and lower rings shaped (see Fig. 1) so as to facilitate the stacking of a plurality of plant cage apparatus, and to accommodate the insertion of a plant container within the plant cage apparatus, the upper ring engaging a portion of the plant container; at least two legs (regions on either side of 8 and 10 of Fig. 1) attached to the circular members wherein each of said legs is formed with an elongate inverted U-shaped member (6 of Fig. 1); a ledge formed (lowest 14 in Fig. 1) on at least one leg of said legs for securement of the plant cage apparatus relative to the associated plant; at least one loop (region around the upper 8 and 10 of Fig. 1) formed by the connection of one of said legs and one of said arcuate members for removal and transport of the plant cage apparatus; and wherein the plant cage is adapted to support an associated plant by the insertion of a plant container into the interior volume of the wire-structure (structure capable of supporting a plant container), wherein the plant container is supported above the ground-by-the wire structure.

As to Claim 16, Arnett further discloses the arcuate members circular (see Fig. 1).

#### ***Allowable Subject Matter***

Claims 2 and 3 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 12 and 14 are allowed over the art or record.

***Response to Arguments***

Applicant's arguments with respect to claims 1-5, 7-9, 10, 12, 14-16, and 25 have been considered but are moot in view of the new ground(s) of rejection. Examiner considers the combination of Emalfarb et al. and Markowski to be proper because both references are concerned with support plant containers.

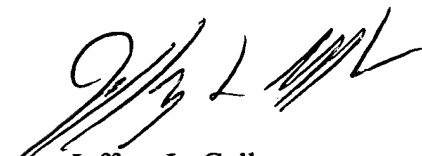
***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Nozawa, Emalfarb et al. ('181), Summers, and Knipe disclose in the prior art various wire plant supports.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Jeffrey L. Gellner whose phone number is 703.305.0053. The Examiner can normally be reached Monday through Thursday from 8:30 am to 4:00 pm. The Examiner can also be reached on alternate Fridays.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Peter Poon, can be reached at 703.308.2574. The official fax telephone number for the Technology Center where this application or proceeding is assigned is 703.872.9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703.308.1113.



Jeffrey L. Gellner